IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

-

WRIT PETITION NO : 12058 of 2004

Between:

Smt. Poojari Biksham @ Bikshalu,

W/o. Late Chinna, Hindu, labour,
R/o. Ambedkar Slum, Near Rail Nilayam,

East Maredpally, Secunderabad - 500 026.

..... PETITIONER

AND

1. The District Collector, Hyderabad District,

Nampally Station Road, Hyderabad.

2. The District Manager, Andhra Pradesh

State Housing Corporation Limited,

Collectorate Complex, Hyderabad District,

Nampally Station Road, Hyderabad.

3. The Revenue Divisional Officer,

Secunderabad Division, Penderghast Road,
Secunderabad.

4. The Mandal Revenue Officer, East Maredpally,

Addagutta, Secunderabad.

5. P. Kondaiah, s/o. P. Masthan, business,
R/o. 16GF in the House of his Mother

Smt. Mallamma @ Yellamma, Dr. Ambedkar Slum,

Behind Rail Nilayam, East Maredpally, Secunderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue appropriate Writ, orders or directions and more particularly in the nature of Writ of Mandamus declaring that the acts, deeds and things of the respondents 1 to 4 herein in not protecting the petitioner's interest over her tenement bearing No.16FF situated at Dr. Ambedkar Nagar Slum behind Rail Nilayam, East Maredpally, Secunderabad, at the instance of the 5th respondent herein, are illegal, arbitrary and much against to the legal and fundamental rights guaranteed under the Constitution of India and consequently direct the respondents 1 to 4 not to allow the 5th respondent or any other person or persons to occupy the petitioner's allotted tenement bearing No. 16FF in the above slum, in the interest of Justice, equity and good conscience, as otherwise the petitioner shall be put to grave hardship and injury.

Counsel for the Petitioner: MR.PALIVELA SATYARAJA BABU
Counsel for the Respondent Nos.1 to 4: GP FOR REVENUE

Counsel for the Respondent No.5: MR.V.HARI HARAN

The Court made the following:

ORDER:

The case of the petitioner is that she was granted “D” Form patta during the year 1996 in respect of 60 square yards in survey No.771B of Dr.Ambedkar Slum, East Maredpally, Secunderabad, and that respondents 1 to 4 stating that they have formulated rules for construction of tenements in the said slum, made her and others vacate the allotted plots and constructed tenements and informed her that she is allotted tenement 16FF and that she is eligible for government loan of Rs.25,000/- besides subsidy of Rs.3,000/- and that she should invest Rs.2,000/-. Wife of 5th respondent is allotted tenement 13GF. Tenement 16GF was allotted to the mother of the 5th respondent after the death of his father P.Mastan, and the sister-in-law of 5th respondent is allotted tenement No.12FF in the above slum. Eventhough, all his family members are allotted tenements, 5th respondent is trying to occupy tenement No.16FF by force and so necessary directions may be given to respondents 1 to 4 to protect her possession.

2. Mandal Revenue Officer (4th respondent) filed his counter affidavit on behalf of respondents 1 to 4, contending that construction of tenements consisting a ground,

1st and 2nd floors was contemplated by the Urban Community Development, MCH. After dismissal of the writ petitions questioning construction of three storied buildings, on 01.08.1988, Government changed the pattern of housing scheme from 1 + 2 to 1 + 1. Thereafter verification of the list of 294 families who were granted house site pattas during 1986 was made, for allotment of tenements constructed and to be constructed and accordingly tenement No.16FF to be constructed is allotted to the petitioner. Since tenement 16FF is not allotted to 5th respondent, he has no title over the same.

3. In his counter affidavit 5th respondent alleged that he is not aware if "D" form patta was granted to the petitioner in 1996 and about her being allotted a non-existent tenement 16FF. He and his parents have been enjoying 60 square yards of site in the slum for over 60 years. After the death of his father, his mother was allotted D-Form patta and she is always residing in the plot shown as 16. Pillars and roof in the ground floor level only were allotted to his mother and he has been living on the terrace of 16GF, from which he is sought to be thrown out by the petitioner without any such right.

4 . The dispute relates to tenements to be constructed in a slum area. First floor tenement, over the ground floor tenement of 16GF, is yet to be constructed. The entitlement of the petitioner to the first floor to be constructed is admitted by respondents 1 to 4. Question of allotment of first floor can arise only after completion of the construction, but not before completion of the construction.

5. If 5th respondent feels that he has any right over the terrace of the tenement 16GF allotted to his mother, he has to approach a civil court and obtain such a declaration, but cannot prevent respondents 1 to 4 from making constructions on the roof of 16GF.

6. In the circumstances, respondents 1 to 4 shall proceed with construction of the first floor over tenement 16GF. On completion of the construction of the first floor, as admitted, they should allot 16FF to the petitioner. It is needless to mention that if 5th

respondent feels that he has a right over the terrace of 16GF, he can establish his rights by filing a suit in a civil court.

7. The writ petition is accordingly, disposed of. No costs.

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C.Y.SOMAYAJULU,J.

Date: April 25th, 2005.

BSB

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The District Collector, Hyderabad District,

Nampally Station Road, Hyderabad.

2. The District Manager, Andhra Pradesh

State Housing Corporation Limited,

Collectorate Complex, Hyderabad District,

Nampally Station Road, Hyderabad.

3. The Revenue Divisional Officer,

Secunderabad Division, Penderghast Road,
Secunderabad.

4. The Mandal Revenue Officer, East Maredpally,

Addagutta, Secunderabad.

5. Two CCs to the Government Pleader for Revenue, High Court of

A.P., Hyderabad (OUT).

6. Two CD copies

*Form-NIC-OGS/WP{**SPJS**}*